

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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|----------------------------------|---|------------------|
| JANELLE K. SARAUF, BRIGITTE |) | |
| BERRY, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil No. 2017-5 |
| v. |) | |
| |) | |
| KEVIN A. RODRIQUEZ, CAROLINE F. |) | |
| FAWKES, VIRGIN ISLANDS JOINT |) | |
| BOARD OF ELECTIONS, BOARD OF |) | |
| ELECTIONS ST. THOMAS & ST. JOHN, |) | |
| |) | |
| Defendants. |) | |
| |) | |
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| KEVIN A. RODRIQUEZ, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil No. 2017-3 |
| |) | |
| 32ND LEGISLATURE OF THE VIRGIN |) | |
| ISLANDS, SENATOR MYRON JACKSON, |) | |
| |) | |
| Defendants. |) | |
| |) | |
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ATTORNEYS:

Edward L. Barry

Christiansted, U.S.V.I.

For Janelle K. Sarauw and Brigitte Berry,

Francis E. Jackson, JR

Law Offices of Francis Jackson

St. Thomas, U.S.V.I.

For Kevin A. Rodriguez,

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Claude E. Walker, AG
Ariel Marie Smith-Francois, AAG
Carol Thomas-Jacobs, AAG
Pamela R. Tepper, AAG
V.I. Department of Justice
St. Thomas, U.S.V.I.
For Caroline F. Fawkes,

Julita K. De Leon
St. Thomas, U.S.V.I.
*For Virgin Islands Joint Board of Elections and Board of
Elections St. Thomas & St. John,*

Kye Walker
Christiansted, U.S.V.I.
*For 32nd Legislature of the Virgin Islands and Senator
Myron Jackson.*

ORDER

GÓMEZ, J.

Before the Court is the motion of Kevin A. Rodriguez ("Rodriguez") for an order enjoining the Board of Elections, St. Thomas-St. John from holding a special election (the "Rule 62(c) motion"). Rodriguez also moves for an expedited ruling on the Rule 62(c) motion.

Federal Rule of Appellate Procedure 8 provides that litigants "must ordinarily move first in the district court for . . . an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P.

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8(a)(1)(C). Motions for injunctions pending appeal are brought in a district court under Federal Rule of Civil Procedure 62 ("Rule 62"). See *Vasile v. Dean Witter Reynolds, Inc.*, 205 F.3d 1327 (2d Cir. 2000) ("A party must ordinarily move first in the district court for . . . an order modifying an injunction while an appeal is pending.' Rule 62(c) regulates the power of district courts to grant such relief." (original alterations omitted) (quoting Fed. R. App. P. 8(a)(1))).

In relevant part, Rule 62 provides that, "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(c). When considering Rule 62(c) motions, district courts consider four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987) ("Different Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. Under both Rules, however, the factors regulating the issuance of a stay are

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generally the same.” (citing Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a))). The burden to satisfy those four factors lies with the moving party. *See, e.g., Nken v. Holder*, 556 U.S. 418, 433-34 (2009) (“The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.”). Having considered those four factors, the Court finds that Rodriguez has failed to meet his burden.

The premises considered, it is hereby

ORDERED that Kevin A. Rodriguez’s Rule 62(c) motion is **DENIED**; and it is further

ORDERED that Kevin A. Rodriguez’s motion for an expedited ruling is **MOOT**.

S_____
Curtis V. Gómez
District Judge